THE HON'BLE SRI JUSTICE V. ESWARAIAH

W.P.NO.16655 of 2007:
AND
W.P.NO.16656 of 2007:

Date:07.08.2007

Between:

Idupalapadu Cotton Mills Ltd. rep. By its M.D. Mr.K.Subba Rao .....Petitioners

And/-

The Assistant Director, ESI Corporation and three others
....Respondents.

COMMON ORDER:

Since the parties in both the writ petitions are one and the same, I deem it convenient to dispose of these two writ petitions by way of this common order.

The petitioner in both the writ petitions seeks a writ of mandamus to quash the order, dated 26.07.2007 of the 4th respondent passed in I.A.Nos.174 of 2007 and 175 of 2007 in ESI No.7 of 2007, as illegal and arbitrary.

It is stated that the petitioner is a Company registered under the Companies Act and running Textile Industry carrying on business in manufacturing and sale of yarn in its spinning mill in the name and style of M/s. Idupalapadu Cotton Mills Limited situated at Chilakaluripet, Guntur District.

While so, the second respondent passed an order, dated 28.02.2007 under Section 45-A of the E.S.I. Act, 1948 deciding the contribution payable by the petitioner amounting to Rs.13,80,192/- for the period from 01.05.2004 to 31.07.2005 and ordered to pay the same, failing which recovery proceedings under Section 45-C to 45-I of the ESI Act together with interest payable on the said amount as provided under Section 39(5)(a) of the ESI

Act read with Regulation 29 and 31 (A) of ESI (General) Regulations, 1950.

Aggrieved by the said order, the petitioner filed an appeal before the 4th respondent-Presiding Officer, Labour Court, Guntur and in the said appeal the petitioner filed two applications under Section 75(2)(b) of ESI Act in I.A.Nos.174 of 2007 and 175 of 2007 to reduce the amount to be deposited or to waive the required deposit to be made under the said Act. The application filed in I.A.No.174 of 2007 to waive the deposit has been dismissed; but, whereas the application filed in I.A.No.175 of 2007 to reduce 50% of the amount which is required to be paid has been ordered directing the petitioner to deposit half of the demanded amount, by order dated 26.07.2007.

Questioning both the said I.A.Nos.174 of 2007 and 175 of 2007, these writ petitions have been filed by the petitioner contending that even as per the orders passed by the second respondent under Section 45-A of ESI Act, dated 28.02.2007, no doubt the petitioner failed to produce the required records including the books of accounts on the ground that they were destroyed in the fire accident. But, as per the government notification No.39-A, dated 07.02.1991, the Textile Wage Committee recommended the minimum wages of Rs.1250/- per month with effect from 01.04.1990 to unskilled workers at lowest level in the categories of Mills under which the employee falls, but the employer has not produced wage records for the relevant period to verify the same. It is further stated that as per the wage records produced for the period from May, 2004 to December, 2004, the employer paid wages @ Rs.30/- per day in respect of as many as 196 out of 288 workers in May, 2004, 202 out of 297 in June, 2004, 199 out of 297 in July, 2004, 202 out of 305 in September, 2004, 340 out of 422 in November, 2004 and 313 out of 428 in December, 2004. Therefore, even if the said wages have been taken into account, the petitioner has been paying the wages @ Rs.1200/- per month in 2004. Therefore, I am of the opinion that taking the wages of all the employees @ Rs.4125/- and calculating the contributions thereon at Rs.17,91,614/- appears to be factually incorrect after deducting the contribution already paid amounting to Rs.4,11,422/- and the balance amount that was demanded at Rs.13,80,192/-.

In view of the aforesaid facts and circumstances of the case and in view pendency of E.S.I. case before the Presiding Officer, Labour Court, Guntur, I am of the opinion that it is just and proper to grant stay on payment of 1/3rd of the demanded amount.

Accordingly, the impugned orders of the 4th respondent are modified permitting the petitioner to pay 1/3rd of the demanded amount before the second respondent within four weeks from today and on deposit of the said 1/3rd of the demanded amount, the E.S.I. case may be taken up for hearing and disposal.

With the aforesaid observations, both the writ petitions are disposed of. No costs.

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V.ESWARAIAH,J

Date:07.08.2007
ccm

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